

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)
)
Implementation of Section 1003(b) of the)
Department of Defense Appropriations Act, 2010)

ORDER

Adopted: December 28, 2009

Released: December 28, 2009

By the Commission:

I. INTRODUCTION

1. In this Order, we amend Sections 76.64(l) and 76.65(f) of the Commission's rules in accordance with Section 1003(b) of the Department of Defense Appropriations Act, 2010.¹ Section 325(b)(3)(C)(ii) of the Communications Act of 1934, as amended (the "Act"), required the Commission to adopt regulations that, until January 1, 2010, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith.² Section 325(b)(3)(C)(iii) required the Commission to adopt regulations that, until January 1, 2010, prohibit a multichannel video programming distributor from failing to negotiate in good faith for retransmission consent.³ The Commission has previously adopted rules to implement these provisions, including Sections 76.64(l) and 76.65(f) to reflect the sunset date of January 1, 2010.⁴

2. In Section 1003(b) of the Department of Defense Appropriations Act, 2010, Congress amended Sections 325(b)(3)(C)(ii) and (iii) to replace the previous sunset date of January 1, 2010 with a new sunset date of March 1, 2010.⁵ Accordingly, we are amending our rules to reflect the new sunset date, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires. We are amending these rules without providing prior public notice and comment because prior notice and comment would be impracticable in this case.⁶ Section 1003(b) of the Department of Defense Appropriations Act, 2010 was enacted on December 19, 2009, less than two weeks before the sunset date of January 1, 2010. This provides the Commission with an insufficient amount of time to publish a Notice of Proposed Rulemaking in the *Federal Register*, to allow time for meaningful comment, and to consider those comments before taking the necessary actions prior to the

¹ Department of Defense Appropriations Act, 2010, Pub. L. No. 111-118, § 1003(b) (2009), was enacted on December 19, 2009.

² 47 U.S.C. § 325(b)(3)(C)(ii).

³ 47 U.S.C. § 325(b)(3)(C)(iii).

⁴ See 47 C.F.R. § 76.64(l) ("Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make or negotiate any agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming distributors. This paragraph shall terminate at midnight on December 31, 2009."); 47 C.F.R. § 76.65(f) ("Termination of rules. This section shall terminate at midnight on December 31, 2009.").

⁵ See Department of Defense Appropriations Act, 2010, Pub. L. No. 111-118, § 1003(b).

⁶ See 5 U.S.C. § 553(b)(3)(B).

sunset date of January 1, 2010.⁷ Moreover, our action here is largely ministerial, because it simply implements a new sunset date established by Congress.⁸ Accordingly, we find that this action falls within the “good cause” exception to the notice and comment requirements of the Administrative Procedure Act (“APA”).⁹ For similar reasons, we find good cause to make these amendments to our rules effective upon publication in the *Federal Register*. Because the legislation establishing the new sunset date was enacted less than two weeks prior to the previous sunset date of January 1, 2010, we are unable to provide for a 30-day period before the new sunset date in these rules takes effect.¹⁰

II. PROCEDURAL MATTERS

3. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

III. ORDERING CLAUSES

4. Accordingly, **IT IS ORDERED** that pursuant to the authority found in Section 325 of the Communications Act of 1934, as amended, 47 U.S.C. § 325, and Section 1003(b) of the Department of Defense Appropriations Act, 2010, Pub. L. No. 111-118, § 1003(b) (2009), Sections 76.64(l) and 76.65(f) **ARE HEREBY AMENDED** as set forth in Appendix A and **WILL BECOME EFFECTIVE** upon publication of a notice in the *Federal Register*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

⁷ *See Petry v. Block*, 737 F.2d 1193, 1201 (D.C. Cir. 1984) (holding that the “extremely limited time given by Congress” established “good cause” for not seeking prior notice and comment).

⁸ *See* 5 U.S.C. § 553(b)(3)(B). *See, e.g., Metzenbaum v. Federal Energy Regulatory Commission*, 675 F.2d 1282, 1291 (DC Cir. 1982) (agency order, issued pursuant to congressional waiver of certain provisions of federal law that would otherwise have governed construction and operation of Alaskan natural gas pipeline, was appropriately issued without notice and comment as a nondiscretionary ministerial action); *Implementation of Section 505 of the Telecommunications Act of 1996 (Scrambling of Sexually Explicit Adult Video Service Programming)*, 11 FCC Rcd 5386, 5387 (1996); *Implementation of Sections 204(A) and 204(C) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363, 6364 (1996); *Implementation of Sections 202(A) and 202(B)(1) of the Telecommunications Act of 1996 (Broadcast Radio Ownership)*, 11 FCC Rcd 12368, 12371 (1996); *Implementation of Sections 202(c)(1) and 202(e) of the Telecommunications Act of 1996 (National Broadcast Television Ownership and Dual Network Operations)*, 11 FCC Rcd 12374, 12377 (1996).

⁹ Because we have found good cause for not seeking prior notice and comment, the Regulatory Flexibility Act and the Congressional Review Act do not apply to our action here. *See* 5 U.S.C. § 603(a); 5 U.S.C. § 808.

¹⁰ *See* 5 U.S.C. § 553(d)(3) (“The required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except ... as otherwise provided by the agency for good cause found and published with the rule.”); *see also* 47 C.F.R. § 1.427(b).

APPENDIX**Revised Rules**

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 76 — MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

AUTHORITY: 47 U.S.C. 151, 152, 153, 154, 301, 302, 302a, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 338, 339, 340, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572 and 573.

2. Amend section 76.64 to revise the last sentence of paragraph (l) to read as follows:

* * * * *

(l) * * * This paragraph shall terminate at midnight on February 28, 2010, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires.

* * * * *

3. Amend section 76.65 to revise paragraph (f) to read as follows:

* * * * *

(f) Termination of rules. This section shall terminate at midnight on February 28, 2010, provided that if Congress further extends this date, the rules remain in effect until the statutory authorization expires.